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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

ANGELICA SMITH,

Plaintiff and Appellant,

v.

FONTANA UNIFIED SCHOOL
DISTRICT et al.,

Defendants and Respondents.

E037928

(Super.Ct.No. SCVSS108515)

OPINION

APPEAL from the Superior Court of San Bernardino County. A. Rex Victor,
Judge. Affirmed.

Angelica Smith, in pro. per., for Plaintiff and Appellant.

Creason & Aarvig, Maria K. Aarvig and Tyson A. Young, for Defendants and
Respondents.

1. Introduction

Plaintiff and appellant Angelica Smith appeals after the trial court granted the
motion of defendant and respondent Fontana Unified School District (the District) for

summary judgment on her complaint for employment discrimination. The trial court properly granted the motion for summary judgment; we affirm the judgment in favor of the District.

2. Factual and Procedural History

Plaintiff's fourth amended complaint is the operative pleading. Plaintiff alleged that she was wrongfully denied a permanent position in the District's police department. She alleged that she was not hired because of her sex, and that less qualified male applicants were hired.

The District moved for summary judgment. The District's moving papers showed:

Plaintiff worked periodically as a substitute campus security officer during the 2000/2001 school year. On January 16, 2001, the District posted an opening for a permanent security officer position. Plaintiff applied for the position. Plaintiff's overall score on the written test, physical agility test, and oral interviews was the lowest of all the applicants. Plaintiff was not hired.

At the end of the school year, in June of 2001, the District decided not to retain plaintiff as a substitute security officer. During the 2000/2001 school year, the District had left telephone messages for plaintiff on or about April 2, 2001, and April 5, 2001. Plaintiff did not return those calls until May 8, 2001. Plaintiff was removed from the list of substitute security officers because she had not worked for a period of three months, she had been unavailable to work at times, she failed to return telephone calls in a timely fashion, and she failed to keep in contact with the District. Plaintiff first complained of discrimination in January of 2002, approximately seven months after she had been

removed from the substitute security officer list. Other evidence showed that plaintiff was on the list with the District for work as a substitute warehouse worker or substitute mail clerk.

An assistant principal at a school where plaintiff worked as a security officer described plaintiff as, “Not . . . active enough on campus; [s]he had to be told what to do all the time.” Plaintiff was “too friendly with students,” and she “appeared intimidated.” The school police chief said that plaintiff was “too young looking,” and “not strong enough to be a secondary [campus security officer], and that she just did not look like a person of authority.”

Plaintiff made no showing in opposition to the District’s motion. The court granted the motion and gave judgment for the District.

3. Discussion

A. Standard of Review

We review a grant of summary judgment de novo. (*Intel Corp. v. Hamidi* (2003) 30 Cal.4th 1342, 1348.) We employ the same three-step process used by the trial court: First, we identify the issues framed by the pleadings. Second, we determine whether the moving party’s showing has established facts sufficient to justify a judgment in the moving party’s favor. If there is such a prima facie showing, we then look to see whether the opposition has demonstrated the existence of a triable, material issue of fact. (*Fenn v. Sherriff* (2003) 109 Cal.App.4th 1466, 1472-1473.)

B. The Motion for Summary Judgment Was Properly Granted

There is no dispute over the issues framed by the pleadings. Plaintiff's fourth amended complaint alleged employment discrimination on the basis of sex and retaliatory discharge for having complained about the sex discrimination.

The District demonstrated that there had been no sex discrimination. Plaintiff was one of eight candidates for the permanent campus security officer position. Her written test scores were the lowest of all eight candidates. She had the second lowest score on the agility test. Five of six interviewers ranked plaintiff last; the sixth interviewer ranked plaintiff second to last. Seven candidates ranked higher than plaintiff, and only four positions were open. The District presented valid, nondiscriminatory reasons why plaintiff was not hired as a permanent security officer.

In addition, plaintiff's deposition testimony revealed that she had no evidence to support her claims of sex discrimination. She admitted that she did not know why she was not offered the position. She did not know what her test scores were. Plaintiff admitted that no one said she was not hired because of her sex. She did not know who made the decision to hire or not hire a candidate.

As to the retaliation claim, the District showed that plaintiff was removed from the substitute security officer list for valid, nondiscriminatory reasons. The factors the District considers when deciding whether to retain a classified substitute employee for the next year include the number of days the employee worked, the number of days the employee was unavailable, whether the employee maintains regular contact with the

District, whether the employee responds timely to telephone notices, and whether the employee was available when work was needed.

Plaintiff worked periodically as a substitute security officer between November 2000 and March 2001. Plaintiff notified the District that she would be unavailable from March 26 to March 30 for a planned vacation. The District called plaintiff on April 2 and April 5, 2001. Plaintiff did not respond to these telephone messages. Plaintiff called back on May 8, 2001, over a month later. Plaintiff was told on that date that no substitute assignments were available. Between the date of plaintiff's inquiry on May 8, 2001, and June 15, 2001, plaintiff did not again contact the District regarding substitute security officer work. The District decided to remove plaintiff from the substitute security officer list because she had not worked in three months, she had failed to timely return telephone calls for work, she had been unavailable for work at times, and she failed to make minimal efforts to keep in contact with the District office.

In addition, the District presented evidence that plaintiff did not complain about discrimination until January of 2002, many months after plaintiff had been removed from the substitute security officer list. Plaintiff admitted in her deposition that she had no evidence that she was removed from the substitute security officer list in retaliation for making a discrimination claim.

The District's showing was more than sufficient to justify a judgment in its favor. Plaintiff made no response and adduced nothing to demonstrate that any triable issues of material fact existed.

The trial court properly granted the District's motion for summary judgment.

4. Disposition

The judgment is affirmed. The District is awarded its costs on appeal.

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/s/ GAUT
J.

We concur:

/s/ RICHLI
Acting P. J.

/s/ KING
J.